

1 Ardleigh Road

London N1 4HS

Tel: 020 7249 7373

Fax: 020 7249 7788

Email: info@howardleague.org

Web: www.howardleague.org

Rt Hon George Osborne MP
Chancellor of the Exchequer and First Secretary of State
HM Treasury
1 Horse Guards Road
102 Petty France
London
SW1H 9AJ

28 August 2015

Dear George Osborne

Re: Achieving a smaller, cheaper, better justice system: Submission to the Spending Review 2015 by the Howard League for Penal Reform

1. The Howard League welcomes the opportunity to respond to the spending review.
2. The justice budget is far too high. Over the course of the last two decades, the vision for the justice system has been a maximalist one: expanding the reach of the system into people's lives; expanding state interference through multifarious legislation; expanding the numbers of people entering the courts and, ultimately, entering prison. The justice budget therefore could and should be cut substantially, but it must be cut in the right way. Rather than continue to try to make the justice system a less costly version of what it already is, the focus should be on making it a smaller, cheaper and better system.
3. Options for significantly reducing the Ministry of Justice budget are limited. The courts and legal aid budgets have already undergone large cuts. The majority of the budget for the probation service is now tied up in long contracts with private companies. The prison system, which takes up over a third of the Ministry of Justice's budget, is one of the only areas where substantial savings can be made.
4. Reducing the cost of imprisonment without tackling the ever-increasing prison population has not worked. Prisons may be slightly cheaper, but they are also more deadly, dangerous and ineffective. Serious assaults against both prisoners and staff are at record highs. Seven people were murdered in prisons in the last 12 months. A substantial proportion of the 86,000 men, women and children in prison spend around 23 hours a day locked in overcrowded cells with no access to work or education. Cutting the prison budget without cutting the number of prisoners has resulted in failing prisons which cannot sustain

5. further budget reductions. The costs of recidivism and further punishment for the people who are released from these prisons are, and will continue to be, huge.
6. Massive cost savings can be realised if the prison population is reduced and prisons are closed. This is not an untried or untested suggestion. Alberta, Canada reduced its prison population by a third in response to budgetary pressures in the late 1990s and early 2000s (see Webster, C. and Doob, A., (2014) Penal reform 'Canadian style': Fiscal Responsibility and Decarceration in Alberta, Canada' Punishment & Society 16(1)) The rest of the country then followed suit. It did this by introducing a presumption against short-term sentences, encouraging diversion at every level of the criminal justice system and introducing early release programmes. England and Wales currently has a much more bloated prison system than that which existed in Canada in the mid-nineties, we can therefore go much further.
7. In line with the request of the Treasury for non-ring-fenced departments to submit plans to reduce budgets by 25 and 40 per cent, the Howard League has put forward policy plans which would cut the prison population by 25 per cent and 40 per cent respectively. However, we argue that the prison population should be cut by at least 50 per cent, taking it back to the size it was under Margaret Thatcher, with a small proportion of the savings made available to prison governors to be innovative and improve their prisons.
8. It should be noted that reducing prisoner numbers and closing prisons must go hand in hand for savings to be realised. Closing prisons and overcrowding those that remain only creates violent institutions and higher reoffending rates. Each prison closed will save the government millions each year, not only in staff costs and land value, but in prisoner escort costs, court costs, NHS costs and many others.

Reducing the prison population by a quarter

9. The prison population currently stands at 85,956 (as at 21.8.15). It has almost doubled in size since 1990, when it stood at 44,975. However, looking at the prison population on any one day disguises the even larger number of people who enter prison on remand or under sentence in any one year. In the most recent period for which figures are available, there were approximately 103,000 receptions into prisons in England and Wales.
10. Implementation of these policies would reduce the prison population on any one day by approximately a quarter and would reduce the number of receptions by at least half. Following such a reduction a large number of prisons could be closed.

Prohibit the use of short-term sentences (less than 12 months)

11. Short-term sentences are expensive and counterproductive, yet more than 57,000 people are sentenced to serve them each year. They are long enough to disrupt often already chaotic lives but too short to enable a person to begin to address the causes of their offending. If a person had a job, home and family before they go into custody on a short sentence, they are very unlikely to have all these things when they are released. Unsurprisingly reoffending levels amongst this group are very high, creating further victims and putting further pressure on the justice budget.

12. Ministry of Justice research has concluded that both suspended sentences and community sentences have far lower recidivism rates and are substantially cheaper. Furthermore, short sentences are unpopular with prison governors, who have declared them 'expensive and inefficient.' Short-sentences should therefore be abolished and replaced with robust community sentences. This would reduce prison receptions by 57,000 a year and reduce the daily prison population by at least 6,200.

Limit the use of remand

13. On any one day more than 8,000 people in prison have not been found guilty of an offence. An additional 3,500 have not yet been sentenced. Whilst remand is a necessary tool when a person appears to be a danger to public safety and a flight risk, it is used far too often, particularly for those charged with misdemeanours. For example, each year magistrates remand 36,000 people to custody. Few people appearing before a magistrates' court will present a level of danger that cannot be managed on bail and even fewer will be a genuine flight risk. The overuse of remand is highlighted by the fact that 70 per cent of people remanded by magistrates will not go on to receive a custodial sentence either because they were found innocent or (in the majority of instances) the offence was not serious enough to warrant a prison term. Introducing stronger guidelines about the use of remand and requiring magistrates to refer appropriate remand cases to the crown court could reduce the use of remand by around 70 per cent. This would lead to 27,000 fewer periods of remand each year and reduce the daily prison population by around 8,000.

Reduce recalls to custody

14. The use of recall, the process by which people serving their sentences in the community under supervision are brought back to prison, is one of the key drivers of the prison population. The recall population has increased by more than 55 times since 1993. In the last year alone the number of people in prison on recall has increased by 17 per cent. The Ministry of Justice forecasts that it is likely these numbers will continue to rise as the Transforming Rehabilitation programme takes effect. Many people are recalled to prison not for further offences, but for technical breaches of their licence. Whilst these are not always trivial, they can almost always be dealt with in the community. Restricting the ability to recall to custody for technical breaches of licence would reduce the daily prison population by around 5,000.

Use women's centres in the community, not prisons

15. On any given day about 4,000 women are in prison in England and Wales but very few of them need to be there. Only a very small number have committed serious violent offences and present an ongoing risk to the public. Furthermore the overwhelming majority of women in prison have serious mental health problems and a high proportion are mothers. Most women involved in the justice system should not be prosecuted at all, and the rest could be dealt with more effectively, humanely and cheaply in the community. Women's centres are proven to be much more effective in helping women change their lives and reduce reoffending and cost a fraction of a prison place. Ensuring women's centres are properly funded would result in huge savings in every part of the criminal justice system. They are also small and local, resulting in far fewer separations of children and mothers.

16. As the vast majority of women sent to prison serve sentences of less than 3 months, abolishing short sentences would go far to reduce the women's population and allow the Ministry of Justice to close several women's prisons. However, introducing a presumption that sentencers should use women's centres rather than prisons unless a woman presents an ongoing danger to the public would reduce the daily prison population by at least another 1,500.

Reducing the prison population by 40 per cent

17. To reduce the prison population by 40 per cent the following policies ought to be adopted in addition to those above.

Improve the effectiveness of the parole system

18. There are more people serving life and indeterminate sentences in England and Wales than all of the other 46 countries in the Council of Europe combined. Many of the 12,000 indeterminately sentenced prisoners are well beyond their tariff period. In a functioning system, the majority of prisoners should be released at or near to their tariff date. A very large number of prisoners are serving a much longer proportion of their sentences in custody due to delays in the parole system, an overly risk-averse parole board and a lack of access to work, education and offender behaviour courses that enable them to demonstrate their readiness for release. This problem is set to get worse as the backlog of oral hearings in front of the Parole Board is expected to rise significantly in 2015/16. The National Offender Management Service (NOMS) estimates that the delays will result in an additional 650-700 prison places.

19. To facilitate the release of indeterminately sentenced prisoners, and save the millions currently spent incarcerating prisoners beyond their tariff dates, a presumption should be introduced that people should be released at their tariff date unless there is a good reason not to (reversing the current negative presumption). This would do much to overcome the unsustainable current situation where prisoners are required to do the almost impossible in proving they are no longer a risk. Earned release schemes where indeterminately sentenced prisoners could earn release before their tariff expiry date through work, education and peer mentoring should also be introduced.

20. In regard to the 4,600 people in prison serving the now abolished indeterminate sentence for public protection (IPPs), these sentences could be converted to an equivalent determinate sentence factoring in sufficient time for a safe, planned release.

21. Improving the functioning of the parole system with a particular focus on enabling prisoners to be released at or before their tariff date and reviewing the system for those serving IPPs would result in up to 6,000 fewer people in prison on any one day.

Reduce the number of criminal offences

22. Between May 2010 and May 2014, 1076 new criminal offences were created in England and Wales, approximately two-thirds of which carry possible custodial penalties. Furthermore, during the last government alone, 21 law-and-order related Acts of Parliament were passed. During the New Labour years 33 such Acts were passed. By

contrast, a mere 20 law-and-order Acts were passed between 1980 and 1988. The current habit of creating ever more criminal offences and reasons to put people into the criminal justice system must be curbed.

23. Prosecutions for the lowest-level offences are rising. Parents are more frequently appearing before the court for taking their children on holiday during term time or because their child has been truanting. In addition, the criminalisation of the consequences of poverty continues, with homeless people appearing before magistrates daily charged with begging or drinking in the street. These convictions often have a significant impact on people's lives and can lead to further involvement in the criminal justice system – particularly when the fines and courts fees resulting from these charges are unaffordable. Taking action to reduce the number of annoying but not dangerous offences would reduce demand on and long-term involvement in the criminal justice system.
24. Furthermore, far too many offences carry potential custodial penalties. Several of the offence types driving up the prison population (fraud, criminal damage and theft offences) are non-violent and non-sexual. Prison should not be the default option for perpetrators of these types of offences; community options should be considered first.
25. The Ministry of Justice should undertake a review of low level offences with the aim of making a sizeable proportion non-criminal. A further review should examine those offences which attract a potential custodial penalty with a view to restricting prison sentences to serious offences. Decreasing the number of criminal offences and the proportion which attract a custodial sentence could reduce the daily prison population by several thousand.

Reducing the prison population by half

26. Whilst reducing the prison population by 25 per cent or 40 per cent would result in substantial savings and be a welcome step in the right direction, it does not go far enough. The Howard League recommends that the Treasury and Ministry of Justice agree to cut the prison population by at least half with a modest proportion of savings being returned to governors to improve staffing ratios, safety levels and purposeful activity in their prisons. The savings allocated to prisons could be placed in an enterprise fund that could be accessed by the best-performing governors and used as an incentive to improve performance elsewhere in the prison estate.
27. Reducing the prison population by half would take the population back to its size under the government of Margaret Thatcher. During her 11-year premiership the population was fairly stable at around 43,000. This was, in large part, due to her view that imprisonment was counterproductive and that overcrowding must be avoided. It is this kind of thinking that must be returned to. Reducing the prison population to this level would save the Treasury billions and allow governors to improve conditions in prisons, which the Chief Inspector of Prisons recently described as at their worst in a decade.

Key to halving the problem is the following:

Tackling sentence inflation

28. Whilst increases in remand, recalls, failure of the parole system and the sheer number of criminal offences have played a non-trivial role in doubling the prison population in less than 15 years, the largest factor is sentence inflation.
29. Over the last 10 years average sentence lengths have increased by 24 per cent. For certain offence types the increase is much higher. For example: average prison sentences for fraud offences have increased by 50 per cent; average prison sentences for miscellaneous crimes against society have increased by 61 per cent; average prison sentences for criminal damage and arson have increased by 57 per cent; and average prison sentences for sexual offences have increased by 54 per cent. These dramatic rises were neither intentional nor evidence-based and they have had no impact on reoffending.
30. There are several ways that sentence inflation could be tackled. For example, the Ministry of Justice could reduce all prison sentences by a quarter. This might sound like a bold move, but would in fact simply take average sentence lengths back to 2004 levels. Almost all other European countries have shorter average sentence lengths than England and Wales. The Netherlands acted to reduce sentence inflation by introducing more sensible sentencing tariffs and shorter maximum sentences for the majority of criminal offences. For example, the maximum sentence for domestic burglary under Dutch law is six years, compared to 14 in England and Wales.

Introducing more accountability

31. Another issue to be considered is how to hold sentencers more accountable for the decisions they make. Currently there is no incentive for judges to think about the costs and likely effectiveness of the sentences they hand down. They occupy a unique position of being able to authorise unlimited public resources and funds. Introducing a system in which sentencers must consider the likely outcomes and financial implications of each sentence they hand down would be highly likely to lead to significant cost reductions and lower reoffending rates.

Getting value from a smaller justice budget

32. With a substantially reduced justice budget it will be more important than ever to ensure that value for money is obtained. A large proportion of the justice budget is already tied up in long contracts with the private sector to build and manage prisons and supervise people in the community. The Ministry of Justice has a poor record in providing the robust contract management required to ensure public money is not being wasted. As well as years of fraudulent tagging by G4S and Serco on an electronic monitoring contract and a poorly-awarded court interpreters contract causing huge delays, private sector prisons consume a disproportionate amount of the justice budget. Recent Ministry of Justice figures show that 23 per cent of the prison budget is spent on private prisons yet they make up only 11 per cent of the prison estate and hold 18 per cent of prisoners. Private prisons were introduced almost solely on the basis that they are cheaper to run than public ones. Almost all private prisons benefit from newer buildings, better technology and less overcrowding, and so in

theory at least much less than 18 per cent of the prison budget should be spent on them. Based on this record, the extension of private sector involvement in the justice system under the Transforming Rehabilitation programme is of great concern.

33. The Howard League urges the Treasury and the Ministry of Justice, as part of the spending review, to improve outsourcing and contract management capabilities and implement robust processes that allow contracts to be removed if performance is poor or they are not providing value for money.

Wider cost savings

34. Halving the prison population and closing prisons would not just enable huge savings to be made to the prison budget, but would produce knock-on savings in a wide range of areas. For example, as non-custodial sentences are much more effective in reducing reoffending, the costs of recidivism to the economy (estimated at £13 billion) would fall. Furthermore, fewer criminal offences would result in a smaller and cheaper court service. Shorter sentences (and therefore shorter licence periods) and the abolition of sentences of less than twelve months would lead to a much smaller probation service budget. Implementing these policies is likely to reduce demand to varying extents on the police, housing services and drug treatment services as well as many others.
35. If the criminal justice system, and the prison system in particular, is made much smaller it will not only be cheaper but will also be better.
36. The Howard League welcomes opportunities to discuss any of the proposals above with Ministers and officials.

Yours sincerely,



Frances Crook
Chief Executive, the Howard League for Penal Reform